IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4001 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRATAPJI RAMJI ODD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4001 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR K.T.DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/09/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), the Commissioner of Police Ahmedabad City, Ahmedabad vide order dated January 25,

2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. From the averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2(c) of the Act and 10 cases punishable under Chapter-17 of the IPC are registered against the petitioner and statements of two witnesses were recorded and therefore, according to the detaining authority the petitioner is a dangerous person and the alleged activities of the petitioner are prejudicial to the maintenance of the public order and therefore, powers under Section 9(2) of the Act were exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. H.R.Prajapati, learned advocate for the petitioner has restricted his arguments to the effect that subjective satisfaction recorded by the detaining authority to exercise powers under Section 9(2) of the Act cannot be considered as genuine. Reliance is placed on the statements of two witnesses which were recorded on January 21, 2001 and January 22, 2001 and verified by the detaining authority on January 24, 2001 and immediately thereafter on the next date i.e. on January 25, 2001, the detention order came to be passed. Therefore, it may be said that the detaining authority has not applied his mind properly before passing the impugned order of detention and hence, the said order of detention is vitiated as the Commissioner of Police, Ahmedabad City, Ahmedabad has not recorded the subjective satisfaction before passing the impugned order. It is further stated that the detaining authority has not exercised powers under Section 9(2) of the Act properly as detaining authority had no sufficient time to examine the statements of the witnesses.

5. Mr. K.T.Dave, learned AGP appearing on behalf of the respondent State has opposed the petition by filing reply affidavit which is sworn by Mr. P.C.Pandey, Commissioner of Police, Ahmedabad City. However, he does not dispute the factual aspect of verification of the statements of the witnesses which were recorded on

January 21, 2001 and January 22, 2001 and verified by the detaining authority on January 24, 2001 and immediately on the next date i.e. on January 25, 2001, the detention order came to be passed.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. A similar question arose in the case of KALIDAS C KAHAR VS. STATE 1993 (2) GLR 1659 in which proposal was made on October 16, 1992 and detention order was passed on October 17, 1992 and therefore it was held to be a wrong exercise of power under Section 9(2) which has affected the detenu's right of making an effective representation under Article 22(5) of the Constitution and therefore, the detention order was quashed.

8. Applying the aforesaid principles laid down by this Court to the facts of the present case, it is clear that the present case is identical to the case referred to above and here also statements of two witnesses were recorded on January 21, 2001 and January 22, 2001 and verified by the detaining authority on January 24, 2001 and immediately one day thereafter i.e. on January 25, 2001, the detention order came to be passed, and hence, I am of the opinion that the order impugned cannot be sustained and deserves to be quashed and set aside.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. the impugned order of detention dated January 25, 2001 (Annexure-A to the petition) is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*